HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.14945 OF 2005

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Between:

P.Mangamma @ Nagamma W/o Veeraiah
R/o Madhurangar, Borabanda, Hyderabad
and others

…Petitioners

A n d

Hyderabad Municipal Corporation rep. by its
Commissioner, Hyderabad.

…Respondents

:: **O R D E R** ::

Counsel for petitioner : Sri P.Ganga Rami Reddy

Counsel for respondents : Mrs. G. Jyothi Kiran,
Standing Counsel for
Municipal Corporation,
Hyderabad

17th August 2006

Per G.V.Seethapathy, J

In this petition, the petitioners have prayed for grant of a declaration that the proposed demolition of the houses constructed by them in Plot Nos.52, 54 and 53 in Sy.No.127 of Yousufguda Village for purpose of construction of a community hall is illegal and arbitrary. They have further prayed for restraining the respondents from demolishing their houses.

In the affidavit filed by petitioner No.1 Smt.P. Mangamma @ Nagamma, it has been averred that petitioners are in possession and enjoyment of plot Nos.52, 54 and 53, each measuring 50 square yards in Sy.No.127 of Yousufguda village and the Revenue Divisional Officer, Hyderabad granted patta in Form-D in favour of petitioners 1 and 2 in respect of plot Nos.52 and 54 respectively and the proposal for grant of patta in favour of petitioner No.3 in respect of plot No.53 is under process. The deponent has further averred that the petitioners have constructed houses in their respective plots and have been residing therein. The petitioners complain that Madhuranagar (Borabanda) Weaker Section Welfare Association made a request to respondents to construct a compound wall in Plot Nos.52 to 54 and in pursuance of the letter of second respondent (Additional Commissioner), the Project Officer inspected the site and reported that there is no open space available adjacent to the house of the petitioners, but, in spite of the same, the respondents are proceeding to

construct a community hall in the plots under the occupation of the petitioners. The petitioners further complain that without giving any notice to them, the respondents are resorting to demolish their houses and evict them from the plots under their occupation highhandedly and in violation of the principles of natural justice.

The Project Officer, Urban Community Development, Municipal Corporation, Hyderabad (for short, 'the Corporation') has filed a counter-affidavit on behalf of the respondents stating that the petitioners 1 and 2 were issued pattas in the year 1996 in respect of 50 square yards each in Plot Nos.52 and 54, but no patta has been granted to petitioner No.3 in respect of plot No.53. He has further averred that adjacent to the plots of the petitioners, there is government land of 166 square yards on which it is proposed to construct a community hall for public purpose in response to a request made by the people of the locality. In the counter-affidavit it has been further averred that Sri P.Veeraiah, husband of petitioner No.1 and brother of the second petitioner have encroached upon the adjacent government land measuring 166 square yards and constructed compound wall, which was demolished on 1.5.2003 and possession of the encroached land was taken, but they are trying to encroach on the government land and this petition has been filed seeking protection of the encroachment sought to be made in government land.

Learned counsel for the petitioner contended that in spite of a direction given by this Court in W.P.No.14448 of 2003 that petitioners 1 and 2 shall be entitled to remain in possession of 50 square yards each in Survey No.127 of Yousufguda Village and that the respondents shall not interfere with their possession, the respondents are trying to evict them from their plots by demolishing the residential

houses situate thereon.

Learned Standing Counsel for the respondent-Corporation, on the other hand, submitted that even in the order dated 18.7.2003 in W.P.No.14448 of 2003, it was observed that it shall be open to the respondents to remove any encroachments made by petitioners 1 and 2 in the land other than 50 square yards assigned to them and accordingly steps have been taken to remove the encroachments over the adjacent government land of 166 square yards, which was encroached upon by Veeraiah, the husband of first petitioner and brother of the second petitioner.

We have thoughtfully considered the submissions and arguments of the learned counsel for both parties and perused the records. The complaint of the petitioners is that the respondents are trying to interfere with petitioner's possession and enjoyment of plots 52, 54 and 53 of Sy.No.127 of Yousufguda by demolishing the residential houses constructed by them on the pretext that the said land is required for construction of a community hall. The respondents, on the other hand, contend that the community hall is proposed to be constructed over an extent of 166 square yards of government land, which is adjacent to plots 52 to 54 and that the petitioners' possession and enjoyment of the plots is not being interfered with.

There is no dispute between the parties that plots 52 and 54 each measuring 50 square yards were assigned in favour of petitioners 1 and 2 in 1996 and they have constructed houses thereon and have been residing therein. It is also not in dispute that the proposal for assignment of Plot No.53 measuring 50 square yards in favour of third petitioner is still pending. In Writ Petition No.14448 of 2003 filed by the petitioners, this Court passed order dated 18-7-2003

and directed that the petitioners 1 and 2 shall be entitled to remain in possession of 50 square yards in S.No.127 and respondents shall not interfere with their possession and further directed that the case of the third petitioner for grant of patta shall be considered by the revenue authorities. At the same time, it was observed that the respondents shall be free to remove any encroachment made by the petitioners 1 and 2 in the land other than 50 square yards assigned to them. The specific case of the respondents in the earlier Writ Petition No.14448 of 2003 as also in the present petition is that one Veeraiah, husband of the first petitioner and brother of the second petitioner has been repeatedly trying to encroach upon the adjacent government land of 166 square yards by constructing a compound wall and based on the reports of the Mandal Revenue Officer and Project Officer of the Corporation, encroachments were removed by demolishing the unauthorized construction of the compound wall. The averments contained in the counter-affidavit filed on behalf of the respondents, which are based on the report of the Mandal Revenue Officer clearly show that the compound wall enclosing 166 square yards of government site, unauthorizedly constructed by Veeraiah was demolished for the first time on 1.5.2003 and the said Veeraiah again encroached upon the government land and constructed compound wall, which was demolished for the second time on 23.6.2004 in pursuance of the report of the Project Officer. It is the case of the respondents that P.Veeraiah and the petitioners are again trying to encroach upon the government land. The respondents, therefore, submit that in order to prevent encroachment and also responding to a request made by the people of the locality, a community hall is proposed to be constructed on the government land of 166 square yards, but in view of the interim order dated 13.7.2005 granted in WPMP No.18995 of 2005, the proposed construction of the community

hall could not take place.

The right of the petitioners 1 and 2 to remain in possession of plots 52 and 54 respectively, which were assigned to them has never been questioned by the respondents. However, the petitioners do not have any right to encroach upon any government land adjacent to the plots assigned to them and it is open to the respondents to construct a community hall in response to a public demand for the benefit of the community at large. The petitioners have no right to question the same. While according protection to the petitioners 1 and 2 in respect of their enjoyment of 50 square yards each, this Court has previously given liberty to the respondents to remove any encroachments made by petitioners 1 and 2 in the land other than 50 square yards each assigned to them. The delimitation of the said plots with reference to their boundaries on the ground is a matter of survey and the question as to whether or not the petitioners are in possession and enjoyment of land other than 50 square yards each assigned to them being essentially one of fact cannot be decided in the present proceedings under Article 226 of the Constitution of India.

With the above observations, the writ petition is dismissed. However, it is made clear that if there is any dispute as to the boundary of the plots in possession of the petitioners, the same has to be resolved after due measurement with the help of qualified surveyors and with reference to the records. It is also made clear that the petitioners cannot take possession of any land over and above 50 square yards allotted to petitioners 1 and 2. If the petitioners or any person acting on their behalf has made encroachment, then the respondents shall be free to remove such encroachment and it will not be open to the petitioners to challenge such action.

G.V.SEETHAPATHY, J

G.S.SINGHVI, CJ

17th August 2006
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